

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 23, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Walla Walla District, 053200104, City of Blackfoot diversion for Jensen Grove Lake.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Idaho County/parish/borough: Bingham City: Blackfoot
Center coordinates of site (lat/long in degree decimal format): Lat. 43.2162966716762°, Long. -112.350240427034°.
Universal Transverse Mercator - Zone: 12; X Coordinate 390330.307665658; Y Coordinate 4785719.58530487
Name of nearest waterbody: Snake River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Snake River
Name of watershed or Hydrologic Unit Code (HUC): American Falls, Idaho. 8 Digit HUC 17040206
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☒ Office (Desk) Determination. Date:
☒ Field Determination. Date(s): April 28, 2005

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- ☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☒ TNWs, including territorial seas
☒ Wetlands adjacent to TNWs
☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
☐ Non-RPWs that flow directly or indirectly into TNWs
☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: approx. 3200 linear feet in project site.
Wetlands: NOT DELINEATED acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: **Snake River.**

Summarize rationale supporting determination: The project reach of the Snake River supports occasional recreational boating for fishermen and waterfowl hunters. Small motorized boat, generally less than 18 feet long, use this section of the river. There are public boat ramps both upstream and downstream of the project site. The Idaho Atlas and Gazetteer depicts boat ramp Sites 8780 and 8858 within this general area. Site 8780 is known as the Blackfoot Railroad bridge ramp. Site 8858 is known as the Porterville bridge ramp. Approximately 3 river miles separate these ramps.

The Snake River flows into the Columbia River, which flows to the Pacific Ocean. Further downstream from the project site, the Snake River is designated as a navigable water subject to Section 10 of the Rivers and Harbors Act. The project reach of the Snake River is located less than 100 feet from Interstate 15, a major east-west highway that crosses Idaho carrying interstate and foreign travelers to Yellowstone and Grand Teton National Parks. The river's proximity to the interstate offers easy access to this section of the Snake River to interstate or foreign travelers and potential commerce.

A combination of factors listed above demonstrate that this reach of the Snake River supports actual navigation and is susceptible to being used for water-based interstate commerce by interstate or foreign travelers. Collectively, the factors described above demonstrate that this reach of the Snake River is navigable-in-fact, and designated as a traditionally navigable water (TNW) for purposes of Clean Water Act jurisdictional determinations.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Wetlands exist on the gravel bar island but are small and have not been delineated as part of this application.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW: Not Applicable

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW. Not Applicable

3. Characteristics of all wetlands adjacent to the tributary (if any) . Not Applicable

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

C. SIGNIFICANT NEXUS DETERMINATION. NOT APPLICABLE

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☒ TNWs: at least 3200 linear feet
☐ Wetlands adjacent to TNWs: .

2. **RPWs that flow directly or indirectly into TNWs. Not applicable.**

3. **Non-RPWs⁵ that flow directly or indirectly into TNWs. Not applicable.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Not applicable.**

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Not applicable.**

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Not applicable.**

7. **Impoundments of jurisdictional waters.⁶ Please note American Falls Reservoir is an impoundment but not within the project area.**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):⁷ NOT APPLICABLE

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): NOT APPLICABLE

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Blackfoot 7.5 minute.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): satellite and aerial photos from the 1950's through 2006.
or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .

⁵See Footnote # 3.

⁶To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

⁷Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Preparer, Mr. Robert Brochu, has personally navigated this river reach in a jetboat.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The project reach of the Snake River supports occasional recreational boating for fishermen and waterfowl hunters. Small motorized boat, generally less than 18 feet long, use this section of the river. There are public boat ramps both upstream and downstream of the project site. The Idaho Atlas and Gazetteer depicts boat ramp Sites 8780 and 8858 within this general area. Site 8780 is known as the Blackfoot Railroad bridge ramp. Site 8858 is known as the Porterville bridge ramp. Approximately 3 river miles separate these ramps.

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